

General at the end of such five years and may require that all or any part of such proceeds be released from escrow and paid into the Crime Victims Fund in the Treasury.

(d) As used in this section, the term “interested party” includes the defendant and any transferee of proceeds due the defendant under the contract, the person with whom the defendant has contracted, and any person physically harmed as a result of the offense for which the defendant has been convicted.

(Added Pub. L. 98-473, title II, §1406(a), Oct. 12, 1984, 98 Stat. 2175, §3671; amended Pub. L. 99-399, title XIII, §1306(c), Aug. 27, 1986, 100 Stat. 899; renumbered §3681 and amended Pub. L. 99-646, §§40, 41(a), Nov. 10, 1986, 100 Stat. 3600.)

#### AMENDMENTS

1986—Subsec. (a). Pub. L. 99-646, §40, struck out “chapter 227 or 231 of” after “restitution under”.

Pub. L. 99-399 inserted “an offense under section 794 of this title or for”.

#### EFFECTIVE DATE

Chapter effective 30 days after Oct. 12, 1984, see section 1409(a) of Pub. L. 98-473, set out as a note under section 10601 of Title 42, The Public Health and Welfare.

### § 3682. Notice to victims of order of special forfeiture

The United States attorney shall, within thirty days after the imposition of an order under this chapter and at such other times as the Attorney General may require, publish in a newspaper of general circulation in the district in which the offense for which a defendant was convicted occurred, a notice that states—

- (1) the name of, and other identifying information about, the defendant;
- (2) the offense for which the defendant was convicted; and
- (3) that the court has ordered a special forfeiture of certain proceeds that may be used to satisfy a judgment obtained against the defendant by a victim of an offense for which the defendant has been convicted.

(Added Pub. L. 98-473, title II, §1406(a), Oct. 12, 1984, 98 Stat. 2176, §3672; renumbered §3682, Pub. L. 99-646, §41(a), Nov. 10, 1986, 100 Stat. 3600.)

## CHAPTER 233—CONTEMPTS

Sec.	
3691.	Jury trial of criminal contempts.
3692.	Jury trial for contempt in labor dispute cases.
3693.	Summary disposition or jury trial; notice—Rule.

### § 3691. Jury trial of criminal contempts

Whenever a contempt charged shall consist in willful disobedience of any lawful writ, process, order, rule, decree, or command of any district court of the United States by doing or omitting any act or thing in violation thereof, and the act or thing done or omitted also constitutes a criminal offense under any Act of Congress, or under the laws of any state in which it was done or omitted, the accused, upon demand therefor, shall be entitled to trial by a jury, which shall conform as near as may be to the practice in other criminal cases.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States.

(June 25, 1948, ch. 645, 62 Stat. 844.)

#### HISTORICAL AND REVISION NOTES

Based on sections 386, 389 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Oct. 15, 1914, ch. 323, §§21, 24, 38 Stat. 738, 739).

The first paragraph of this section is completely rewritten from section 386 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, omitting everything covered and superseded by rules 23 and 42 of the Federal Rules of Criminal Procedure.

The second paragraph of this section is derived from section 389 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, omitting directions as to the trial of other contempts which are now covered by rule 42 of the Federal Rules of Criminal Procedure.

Minor changes were made in phraseology.

### § 3692. Jury trial for contempt in labor dispute cases

In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court.

(June 25, 1948, ch. 645, 62 Stat. 844.)

#### HISTORICAL AND REVISION NOTES

Based on section 111 of Title 29, U.S.C., 1940 ed., Labor (Mar. 23, 1932, ch. 90, §11, 47 Stat. 72).

The phrase “or the District of Columbia arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute” was inserted and the reference to specific sections of the Norris-LaGuardia Act (sections 101-115 of Title 29, U.S.C., 1940 ed.) were eliminated.

#### TAFT-HARTLEY INJUNCTIONS

Former section 111 of Title 29, Labor, upon which this section is based, as inapplicable to injunctions issued under the Taft-Hartley Act, see section 178 of Title 29.

### § 3693. Summary disposition or jury trial; notice—(Rule)

#### SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Summary punishment; certificate of judge; order; notice; jury trial; bail; disqualification of judge, Rule 42.

(June 25, 1948, ch. 645, 62 Stat. 844.)

## CHAPTER 235—APPEAL

Sec.	
3731.	Appeal by United States.

Sec.	
3732.	Taking of appeal; notice; time—Rule.
3733.	Assignment of errors—Rule.
3734.	Bill of exceptions abolished—Rule.
3735.	Bail on appeal or certiorari—Rule.
3736.	Certiorari—Rule.
3737.	Record—Rule.
3738.	Docketing appeal and record—Rule.
3739.	Supervision—Rule.
3740.	Argument—Rule.
3741.	Harmless error and plain error—Rule.
3742.	Review of a sentence.

## AMENDMENTS

1984—Pub. L. 98-473, title II, §213(b), Oct. 12, 1984, 98 Stat. 2013, added item 3742.

## § 3731. Appeal by United States

In a criminal case an appeal by the United States shall lie to a court of appeals from a decision, judgment, or order of a district court dismissing an indictment or information or granting a new trial after verdict or judgment, as to any one or more counts, or any part thereof, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

An appeal by the United States shall lie to a court of appeals from a decision or order of a district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

An appeal by the United States shall lie to a court of appeals from a decision or order, entered by a district court of the United States, granting the release of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order granting release.

The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

The provisions of this section shall be liberally construed to effectuate its purposes.

(June 25, 1948, ch. 645, 62 Stat. 844; May 24, 1949, ch. 139, §58, 63 Stat. 97; Pub. L. 90-351, title VIII, §1301, June 19, 1968, 82 Stat. 237; Pub. L. 91-644, title III, §14(a), Jan. 2, 1971, 84 Stat. 1890; Pub. L. 98-473, title II, §§205, 1206, Oct. 12, 1984, 98 Stat. 1986, 2153; Pub. L. 99-646, §32, Nov. 10, 1986, 100 Stat. 3598; Pub. L. 103-322, title XXXIII, §330008(4), Sept. 13, 1994, 108 Stat. 2142; Pub. L. 107-273, div. B, title III, §3004, Nov. 2, 2002, 116 Stat. 1805.)

## HISTORICAL AND REVISION NOTES

## 1948 ACT

Based on title 18, U.S.C., 1940 ed., §682 (Mar. 2, 1907, ch. 2564, 34 Stat. 1246; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; May 9, 1942, ch. 295, §1, 56 Stat. 271).

The word “dismissing” was substituted for “sustaining a motion to dismiss” in two places for conciseness and clarity, there being no difference in effect of a deci-

sion of dismissal whether made on motion or by the court sua sponte.

Minor changes were made to conform to Rule 12 of the Federal Rules of Criminal Procedure. The final sentence authorizing promulgation of rules is omitted as redundant.

## 1949 ACT

This section [section 58] corrects a typographical error in the second paragraph of section 3731 of title 18, U.S.C., and conforms the language of the fifth, tenth, and eleventh paragraphs of such section 3731 with the changed nomenclature of title 28, U.S.C., Judiciary and Judicial Procedure. See sections 41, 43, and 451 of the latter title.

## AMENDMENTS

2002—First par. Pub. L. 107-273 inserted “, or any part thereof” after “as to any one or more counts”.

1994—Second par. Pub. L. 103-322 substituted “order of a district court” for “order of a district courts”.

1986—Fifth par. Pub. L. 99-646 struck out fifth par. which read as follows: “Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with chapter 207 of this title.”

1984—First par. Pub. L. 98-473, §1206, inserted “or granting a new trial after verdict or judgment,” after “indictment or information”.

Third par. Pub. L. 98-473, §205, inserted third par. relating to appeals from a decision or order, entered by a district court of the United States, granting the release of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order granting release.

1971—First par. Pub. L. 91-644, §14(a)(1), enacted provision for appeal to a court of appeals from decision, judgment, or order of district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where double jeopardy prohibits further prosecution.

Second par. Pub. L. 91-644, §14(a)(1), enacted provision for appeal to a court of appeals from decision or order of district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

Such first and second pars. superseded former first eight pars. Pars. one through four had provided for appeal from district courts to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting judgment of conviction for insufficiency of indictment or information, where such decision or judgment was based upon invalidity or construction of the statute upon which the indictment or information was founded and for an appeal from decision or judgment sustaining a motion in bar, where defendant had not been put in jeopardy. Pars. five through eight provided for appeal from district courts to a court of appeals where there were no provisions for direct appeal to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting a judgment of conviction, and from an order, granting a motion for return of seized property or a motion to suppress evidence, made before trial of a person charged with violation of a Federal law, if the United States attorney certified to the judge who granted the motion that the appeal was not taken for purpose of delay and that the evidence was a substantial proof of the charge pending against the defendant.

Third par. Pub. L. 91-644, §14(a)(2), authorized within third par., formerly ninth, an appeal within thirty days after order has been rendered.

Fourth par. Pub. L. 91-644, §14(a), in revising the provisions, had the effect of designating former tenth par. as fourth par.

Fifth par. Pub. L. 91-644, §14(a)(3), substituted as a fifth par. provision for liberal construction of this section for prior eleventh par. provision respecting remand of case by Supreme Court to court of appeals that should have been taken to such court and treatment of the court's jurisdiction to hear and determine the case as if the appeal were so taken in the first instance and for prior twelfth par. provision respecting certification of case to Supreme Court that should have been taken directly to such Court and treatment of the Court's jurisdiction to hear and determine the case as if the appeal were taken directly to such Court.

1968—Pub. L. 90-351 inserted eighth par. providing for an appeal by the United States from decisions sustaining motions to suppress evidence and substituted in tenth par. “defendant shall be released in accordance with chapter 207 of this title” for “defendant shall be admitted to bail on his own recognizance”, respectively.

1949—Act May 24, 1949, substituted “invalidity” for “validity” after “upon the” in second par., and conformed language of fifth, tenth, and eleventh pars. to the changed nomenclature of the courts.

#### SAVINGS PROVISION

Section 14(b) of Pub. L. 91-644 provided that: “The amendments made by this section [amending this section] shall not apply with respect to any criminal case begun in any district court before the effective date of this section [Jan. 2, 1971].”

### § 3732. Taking of appeal; notice; time—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Taking appeal; notice, contents, signing; time, Rule 37(a).

(June 25, 1948, ch. 645, 62 Stat. 845.)

#### REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by Rule 3, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### § 3733. Assignment of errors—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Assignments of error on appeal abolished, Rule 37(a)(1).

Necessity of specific objection in order to assign error in instructions, Rule 30.

(June 25, 1948, ch. 645, 62 Stat. 845.)

#### REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by Rule 3, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### § 3734. Bill of exceptions abolished—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Exceptions abolished, Rule 51.

Bill of exceptions not required, Rule 37(a)(1).

(June 25, 1948, ch. 645, 62 Stat. 845.)

#### REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by Rule 3, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### § 3735. Bail on appeal or certiorari—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Bail on appeal or certiorari; application, Rules 38(c) and 46(a)(2).

(June 25, 1948, ch. 645, 62 Stat. 845.)

#### REFERENCES IN TEXT

Rule 38(c) of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by rule 9, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 46 was amended as part of the Bail Reform Act in 1966 and in 1972, and some provisions originally contained in Rule 46 are covered by this chapter, see Notes of Advisory Committee on Rules and Amendment notes under Rule 46, this Appendix.

### § 3736. Certiorari—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Petition to Supreme Court, time, Rule 37(b).

(June 25, 1948, ch. 645, 62 Stat. 845.)

#### REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968. Provisions of such former rule for certiorari are covered by rule 19 et seq. of the Rules of the United States Supreme Court.

### § 3737. Record—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Preparation, form; typewritten record, Rule 39(b).

Exceptions abolished, Rule 51.

Bill of exceptions unnecessary, Rule 37(a)(1).

(June 25, 1948, ch. 645, 62 Stat. 846.)

#### REFERENCES IN TEXT

Rules 37 and 39 of the Federal Rules of Criminal Procedure were abrogated Dec. 4, 1967, eff. July 1, 1968, and are covered by Rule 10, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### § 3738. Docketing appeal and record—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Filing record on appeal and docketing proceeding; time, Rule 39(c).

(June 25, 1948, ch. 645, 62 Stat. 846.)

#### REFERENCES IN TEXT

Rule 39 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by Rules 10 to 12, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### § 3739. Supervision—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Control and supervision in appellate court, Rule 39(a).

(June 25, 1948, ch. 645, 62 Stat. 846.)

#### REFERENCES IN TEXT

Rule 39 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by Rule 27, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### § 3740. Argument—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Setting appeal for argument; preference to criminal appeals, Rule 39(d).

(June 25, 1948, ch. 645, 62 Stat. 846.)

#### REFERENCES IN TEXT

Rule 39 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by Rule 34, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### § 3741. Harmless error and plain error—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Error or defect as affecting substantial rights, Rule 52.

Defects in indictment, Rule 7.

Waiver of error, Rules 12(b)(2) and 30.

(June 25, 1948, ch. 645, 62 Stat. 846.)

### § 3742. Review of a sentence

(a) APPEAL BY A DEFENDANT.—A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines; or
- (3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11)<sup>1</sup> than the maximum established in the guideline range; or
- (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

(b) APPEAL BY THE GOVERNMENT.—The Government may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines;
- (3) is less than the sentence specified in the applicable guideline range to the extent that the sentence includes a lesser fine or term of imprisonment, probation, or supervised release than the minimum established in the guideline range, or includes a less limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11)<sup>1</sup> than the minimum established in the guideline range; or
- (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

The Government may not further prosecute such appeal without the personal approval of the Attorney General, the Solicitor General, or a deputy solicitor general designated by the Solicitor General.

(c) PLEA AGREEMENTS.—In the case of a plea agreement that includes a specific sentence under rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure—

- (1) a defendant may not file a notice of appeal under paragraph (3) or (4) of subsection (a) unless the sentence imposed is greater than the sentence set forth in such agreement; and
- (2) the Government may not file a notice of appeal under paragraph (3) or (4) of subsection (b) unless the sentence imposed is less than the sentence set forth in such agreement.

(d) RECORD ON REVIEW.—If a notice of appeal is filed in the district court pursuant to subsection (a) or (b), the clerk shall certify to the court of appeals—

- (1) that portion of the record in the case that is designated as pertinent by either of the parties;
- (2) the presentence report; and
- (3) the information submitted during the sentencing proceeding.

(e) CONSIDERATION.—Upon review of the record, the court of appeals shall determine whether the sentence—

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines;
- (3) is outside the applicable guideline range, and
  - (A) the district court failed to provide the written statement of reasons required by section 3553(c);
  - (B) the sentence departs from the applicable guideline range based on a factor that—
    - (i) does not advance the objectives set forth in section 3553(a)(2); or
    - (ii) is not authorized under section 3553(b); or
    - (iii) is not justified by the facts of the case; or
  - (C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c); or
- (4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

(f) DECISION AND DISPOSITION.—If the court of appeals determines that—

- (1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;
- (2) the sentence is outside the applicable guideline range and the district court failed to

<sup>1</sup> See References in Text note below.

provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(3) the sentence is not described in paragraph (1) or (2), it shall affirm the sentence.

(g) SENTENCING UPON REMAND.—A district court to which a case is remanded pursuant to subsection (f)(1) or (f)(2) shall resentence a defendant in accordance with section 3553 and with such instructions as may have been given by the court of appeals, except that—

(1) In determining the range referred to in subsection 3553(a)(4), the court shall apply the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that were in effect on the date of the previous sentencing of the defendant prior to the appeal, together with any amendments thereto by any act of Congress that was in effect on such date; and

(2) The court shall not impose a sentence outside the applicable guidelines range except upon a ground that—

(A) was specifically and affirmatively included in the written statement of reasons required by section 3553(c) in connection with the previous sentencing of the defendant prior to the appeal; and

(B) was held by the court of appeals, in remanding the case, to be a permissible ground of departure.

(h) APPLICATION TO A SENTENCE BY A MAGISTRATE JUDGE.—An appeal of an otherwise final sentence imposed by a United States magistrate judge may be taken to a judge of the district court, and this section shall apply (except for the requirement of approval by the Attorney General or the Solicitor General in the case of a Government appeal) as though the appeal were to a court of appeals from a sentence imposed by a district court.

(i) GUIDELINE NOT EXPRESSED AS A RANGE.—For the purpose of this section, the term “guideline range” includes a guideline range having the same upper and lower limits.

(j) DEFINITIONS.—For purposes of this section—

(1) a factor is a “permissible” ground of departure if it—

(A) advances the objectives set forth in section 3553(a)(2); and

(B) is authorized under section 3553(b); and

(C) is justified by the facts of the case; and

(2) a factor is an “impermissible” ground of departure if it is not a permissible factor within the meaning of subsection (j)(1).

(Added Pub. L. 98–473, title II, §213(a), Oct. 12, 1984, 98 Stat. 2011; amended Pub. L. 99–646, §73(a), Nov. 10, 1986, 100 Stat. 3617; Pub. L. 100–182, §§4–6, Dec. 7, 1987, 101 Stat. 1266, 1267; Pub. L. 100–690, title VII, §7103(a), Nov. 18, 1988, 102 Stat. 4416; Pub. L. 101–647, title XXXV, §§3501, 3503, Nov. 29, 1990, 104 Stat. 4921; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103–322, title XXXIII, §330002(k), Sept. 13, 1994, 108 Stat. 2140; Pub. L. 108–21, title IV, §401(d)–(f), Apr. 30, 2003, 117 Stat. 670, 671.)

#### REFERENCES IN TEXT

Section 3563(b)(6) or (b)(11), referred to in subsecs. (a)(3) and (b)(3), was renumbered section 3563(b)(5) or (b)(10) by Pub. L. 104–132, title II, §203(2)(B), Apr. 24, 1996, 110 Stat. 1227.

The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix of this title.

#### AMENDMENTS

2003—Subsec. (e). Pub. L. 108–21, §401(d)(2), in concluding provisions, substituted “, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court’s application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court’s application of the guidelines to the facts” for “shall give due deference to the district court’s application of the guidelines to the facts”.

Subsec. (e)(3). Pub. L. 108–21, §401(d)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “is outside the applicable guideline range, and is unreasonable, having regard for—

“(A) the factors to be considered in imposing a sentence, as set forth in chapter 227 of this title; and

“(B) the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c); or”.

Subsec. (f). Pub. L. 108–21, §401(d)(3)(A), struck out “the sentence” before dash at end of introductory provisions.

Subsec. (f)(1). Pub. L. 108–21, §401(d)(3)(B), inserted “the sentence” before “was imposed”.

Subsec. (f)(2). Pub. L. 108–21, §401(d)(3)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “is outside the applicable guideline range and is unreasonable or was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

“(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

“(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate;”.

Subsec. (f)(3). Pub. L. 108–21, §401(d)(3)(D), inserted “the sentence” before “is not described”.

Subsecs. (g) to (i). Pub. L. 108–21, §401(e), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

Subsec. (j). Pub. L. 108–21, §401(f), added subsec. (j).

1994—Subsec. (b). Pub. L. 103–322 struck out comma after “Government” in introductory provisions.

1990—Subsec. (b). Pub. L. 101–647, §3501, struck out “, with the personal approval of the Attorney General

or the Solicitor General” after “The Government” in introductory provisions and inserted at end “The Government may not further prosecute such appeal without the personal approval of the Attorney General, the Solicitor General, or a deputy solicitor general designated by the Solicitor General.”

Subsec. (g). Pub. L. 101-647, §3503, inserted “(except for the requirement of approval by the Attorney General or the Solicitor General in the case of a Government appeal)” after “and this section shall apply”.

1988—Subsec. (a)(2). Pub. L. 100-690, §7103(a)(1), struck out “issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)” after “guidelines”.

Subsec. (a)(3). Pub. L. 100-690, §7103(a)(2), added par. (3) and struck out former par. (3) which read as follows: “was imposed for an offense for which a sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and the sentence is greater than—

“(A) the sentence specified in the applicable guideline to the extent that the sentence includes a greater fine or term of imprisonment or term of supervised release than the maximum established in the guideline, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the maximum established in the guideline; and

“(B) the sentence specified in a plea agreement, if any, under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure; or”.

Subsec. (a)(4). Pub. L. 100-690, §7103(a)(4), added par. (4) and struck out former par. (4) which read as follows: “was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is plainly unreasonable or greater than the sentence specified in a plea agreement under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure.”

Subsec. (b). Pub. L. 100-690, §7103(a)(5), inserted “, with the personal approval of the Attorney General or the Solicitor General,” after “The Government” in introductory provisions, and struck out concluding provisions which read as follows: “and the Attorney General or the Solicitor General personally approves the filing of the notice of appeal.”

Subsec. (b)(2). Pub. L. 100-690, §7103(a)(1), struck out “issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)” after “guidelines”.

Subsec. (b)(3). Pub. L. 100-690, §7103(a)(3), added par. (3) and struck out former par. (3) which read as follows: “was imposed for an offense for which a sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and the sentence is less than—

“(A) the sentence specified in the applicable guideline to the extent that the sentence includes a lesser fine or term of imprisonment or term of supervised release than the minimum established in the guideline, or includes a less limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the minimum established in the guideline; and

“(B) the sentence specified in a plea agreement, if any, under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure; or”.

Subsec. (b)(4). Pub. L. 100-690, §7103(a)(5)(A), added par. (4) and struck out former par. (4) which read as follows: “was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is plainly unreasonable or less than the sentence specified in a plea agreement under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure;”.

Subsec. (c). Pub. L. 100-690, §7103(a)(8), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100-690, §7103(a)(8), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 100-690, §7103(a)(6), (7), substituted “applicable guideline range” for “range of the applicable sen-

tencing guideline” in par. (3) and inserted “and shall give due deference to the district court’s application of the guidelines to the facts” after “are clearly erroneous” in concluding provisions.

Subsec. (e). Pub. L. 100-690, §7103(a)(8), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 100-690, §7103(a)(6), substituted “applicable guideline range” for “range of the applicable sentencing guideline”.

Subsecs. (f), (g). Pub. L. 100-690, §7103(a)(8), redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

Subsec. (h). Pub. L. 100-690, §7103(a)(9), added subsec. (h).

1987—Subsec. (a)(4). Pub. L. 100-182, §5(1), substituted “and is plainly unreasonable or greater than the sentence specified in a plea agreement under” for “and is greater than the sentence specified in a plea agreement, if any, under”.

Subsec. (b)(4). Pub. L. 100-182, §5(2), substituted “and is plainly unreasonable or less than the sentence specified in a plea agreement under” for “and is less than the sentence specified in a plea agreement, if any, under”.

Subsec. (d)(4). Pub. L. 100-182, §5(3), added par. (4).

Subsec. (e)(2). Pub. L. 100-182, §5(4), inserted “or was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable” in introductory provisions.

Subsec. (e)(2)(A), (B). Pub. L. 100-182, §5(5), substituted “and” for “the court shall” before “remand”.

Subsec. (e)(3). Pub. L. 100-182, §6, amended par. (3) generally. Prior to amendment, par. (3) read as follows: “was not imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, and is not unreasonable, it shall affirm the sentence.”

Subsec. (f). Pub. L. 100-182, §4, added subsec. (f).

1986—Subsec. (e)(1). Pub. L. 99-646, §73(a)(1), substituted provision directing the court to remand the case for further sentencing proceedings with such instructions as the court considers appropriate, for provision directing the court to remand the case for further sentencing proceedings or correct the sentence.

Subsec. (e)(2)(A). Pub. L. 99-646, §73(a)(2), substituted provision directing the court to remand the case for further sentencing proceedings with such instructions as the court considers appropriate for provision directing the court to remand the case for imposition of a lesser sentence, remand the case for further sentencing proceedings, or impose a lesser sentence.

Subsec. (e)(2)(B). Pub. L. 99-646, §73(a)(2), substituted provision directing the court to remand the case for further sentencing proceedings with such instructions as the court considers appropriate, for provision directing the court to remand the case for imposition of a greater sentence, remand the case for further sentencing proceedings, or impose a greater sentence.

#### CHANGE OF NAME

Words “Magistrate Judge” and “United States magistrate judge” substituted for “Magistrate” and “United States magistrate”, respectively, in subsec. (g) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100-182, set out as a note under section 3006A of this title.

#### EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

**CHAPTER 237—CRIME VICTIMS' RIGHTS**

Sec.

3771. Crime victims' rights.

**PRIOR PROVISIONS**

A prior chapter 237, consisting of sections 3771 and 3772, related to criminal procedure, prior to repeal by Pub. L. 100-702, title IV, §§ 404(a), 407, Nov. 19, 1988, 102 Stat. 4651, 4652, effective Dec. 1, 1988. See sections 2071 to 2074 of Title 28, Judiciary and Judicial Procedure.

**§ 3771. Crime victims' rights**

(a) **RIGHTS OF CRIME VICTIMS.**—A crime victim has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

**(b) RIGHTS AFFORDED.**—

(1) **IN GENERAL.**—In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

**(2) HABEAS CORPUS PROCEEDINGS.**—

(A) **IN GENERAL.**—In a Federal habeas corpus proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in paragraphs (3), (4), (7), and (8) of subsection (a).

**(B) ENFORCEMENT.**—

(i) **IN GENERAL.**—These rights may be enforced by the crime victim or the crime victim's lawful representative in the manner described in paragraphs (1) and (3) of subsection (d).

(ii) **MULTIPLE VICTIMS.**—In a case involving multiple victims, subsection (d)(2) shall also apply.

(C) **LIMITATION.**—This paragraph relates to the duties of a court in relation to the rights of a crime victim in Federal habeas corpus

proceedings arising out of a State conviction, and does not give rise to any obligation or requirement applicable to personnel of any agency of the Executive Branch of the Federal Government.

(D) **DEFINITION.**—For purposes of this paragraph, the term "crime victim" means the person against whom the State offense is committed or, if that person is killed or incapacitated, that person's family member or other lawful representative.

**(c) BEST EFFORTS TO ACCORD RIGHTS.**—

(1) **GOVERNMENT.**—Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

(2) **ADVICE OF ATTORNEY.**—The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

(3) **NOTICE.**—Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

**(d) ENFORCEMENT AND LIMITATIONS.**—

(1) **RIGHTS.**—The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2) **MULTIPLE CRIME VICTIMS.**—In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3) **MOTION FOR RELIEF AND WRIT OF MANDAMUS.**—The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) **ERROR.**—In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.